

RETURN DATE: JANUARY 6, 2004

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| STATE OF CONNECTICUT | : | SUPERIOR COURT |
| <i>Plaintiff</i> | : | |
| | : | |
| v. | : | JUDICIAL DISTRICT OF |
| | : | HARTFORD |
| | : | |
| SECOND CHANCE BODY ARMOR, | : | |
| INC. | : | |
| <i>Defendant</i> | : | NOVEMBER 26, 2003 |

COMPLAINT

COUNT ONE

1. This is an action under the Connecticut Unfair Trade Practices Act ("CUTPA"), Chapter 735a of the Connecticut General Statutes, for injunctive relief against the defendant for alleged violations of Gen. Stat. § 42-110b(a), which governs unfair or deceptive acts and practices, for restitution to consumers for the defendant's alleged violations of law, for civil penalties, and for other relief.

2. The plaintiff is the State of Connecticut, represented by Richard Blumenthal, Attorney General, acting at the request of Edwin R. Rodriguez, Commissioner of Consumer Protection, pursuant to the authority of Chapter 735a of the General Statutes, more particularly, Gen. Stat. § 42-110m(a).

3. The defendant, Second Chance Body Armor, Inc., is a Michigan corporation with a principal place of business in Central Lakes Michigan.

4. The defendant is engaged in the business of designing, manufacturing, marketing, distributing and selling bullet resistant vests and body armor to consumers in the State of Connecticut.

5. Beginning in late 1998 or early 1999, and continuing until approximately September 2003, the defendant designed, manufactured, marketed, distributed and/or sold two models of bullet resistant vests known as the Ultima and Ultimax vest (the "Vests").

6. The primary bullet resistant material in the Vests was a fiber known as Zylon®, manufactured by Toyobo Company, Ltd. ("Toyobo"), a Japanese corporation with a principal place of business in Osaka, Japan. Beginning in or about 1998, Toyobo marketed Zylon as a high performance fiber combining great strength with light weight, suitable for use in protective cloth, heat resistant materials and body armor.

7. The defendant represented that the inclusion of Zylon in the Vests resulted in significant levels of protection in a relatively light weight and comfortable bullet resistant vest.

8. By facsimile communication dated December 18, 1998, however, Toyobo informed the defendant that the strength of Zylon declined when the fibers were exposed to light. Toyobo therefore informed the defendant "to keep fabrics in the box and not to leave fabrics on the table for a long time in your factory."

9. By letter dated July 5, 2001, Toyobo informed body armor manufacturers, including the defendant, that its internal testing of Zylon fibers indicated that the strength of the material decreased under conditions of elevated temperature and humidity. Toyobo stated further that it was beginning tests to determine how Zylon would behave at lower temperatures.

10. By letter dated July 19, 2001, Toyobo further informed body armor manufacturers, including the defendant, that a German body armor manufacturer had determined that the use of Zylon in bullet resistant vests might not be justified because it might not provide the necessary levels of ballistic protection. Toyobo expressly advised manufacturers to reconfirm that their particular product designs met their customers' requirements and to "determine carefully the lifetime of the product based on the design."

11. By further letter dated August 28, 2001, Toyobo informed body armor manufacturers, including the defendant, that results from the testing of Zylon fibers at 40 degrees Celsius and 80% humidity showed a larger than anticipated loss of strength. Toyobo advised manufacturers to "share the information with [their] customers, if it is needed."

12. Throughout the remainder of 2001, all of 2002 and early 2003, Toyobo provided body armor manufacturers, including the defendants, with periodic test results showing continued and even accelerating loss of strength of Zylon fibers under conditions of 40 degrees Celsius and 80% humidity.

13. Beginning in late 1998 or early 1999, the defendant explicitly or implicitly represented, among other things, that:

- a. the Vests would be free of defects in material and workmanship for the applicable warranty period, when in fact they were not;
- b. the ballistic, or protective, panels of the Vests would retain their protective integrity for a period of five (5) years from the date of purchase, when in fact they would not; and

- c. the Vests met or exceeded the minimum performance standards required for certification by the National Institute of Justice, when in fact they did not.

14. In addition to the foregoing misrepresentations, the defendant failed to make a full and fair disclosure to consumers on the topics to which it chose to speak such as, but not limited to:

- a. presence or absence of defects in the material used in the Vests;
- b. the Vests' durability; and
- c. the performance of the Vests' ballistic panels over time.

15. The defendant's representations were material to Connecticut consumers' decisions to purchase the Vests, and consumers did in fact purchase the vests in large numbers.

16. The defendant's acts or practices, as alleged herein, were undertaken in the conduct of trade or commerce, as defined in Gen. Stat. § 42-110a(4).

17. The defendant's acts or practices, as alleged herein, constitute unfair or deceptive acts or practices, in violation of Gen. Stat. § 42-110b(a).

COUNT TWO

1 – 17. The allegations of paragraphs 1 – 17 of the Count One are incorporated herein as paragraphs 1 – 17 of Count Two as if set forth in full.

18. The defendant engaged in the acts or practices alleged herein when it knew or should have known that its conduct was unfair or deceptive, in violation of Gen. Stat. § 42-110b.

COUNT THREE

1 – 16. Paragraphs 1 – 16 of Count One are incorporated herein as paragraphs 1 – 16 of Count Three as if set forth in full.

17. On or about September 8, 2003, the defendant announced that it would begin an immediate program to upgrade or replace the Vests (the "Program"), stating, *inter alia*, that "Zylon vests wear out sooner than expected." As further described herein, this Program is inadequate.

18. Under the Program as originally announced, consumers could receive either (a) free ballistic pads to be installed on the front and rear of the Vests, or (b) a discount toward the purchase of specified non-Zylon vests manufactured by the defendant.

19. By letter dated October 6, 2003, the defendant modified the Program to include an option whereby consumers could receive a prorated credit, depending on the number of months the consumers owned the Vests, towards the purchase of specific non-Zylon vests manufactured by the defendant.

20. At no time did the defendant's Program provide the option of full restitution to any consumer.

21. The original warranty provided that the protection provided by the Vests would be maintained for five (5) years from date of purchase. Thus, the defendant represented to consumers acting reasonably under the circumstances that the Vests' ballistic performance would remain at the specified protection level throughout the warranty period.

22. Despite the representations made by defendant in the warranty at the time of purchase, the Vests' ballistic performance does not, in fact, remain at the same level.

23. Because the Vests' protective properties fail to provide the warranted protection, the Program offered by the defendant deprives consumers of the substantial value of their bargains in one or more of the following ways:

- a. no remedy offered by the Program provides any consumer with a lightweight, bullet resistant vest (for which the consumer already paid) without additional cost to the consumer;
- b. the only "free" remedial option offered to the consumer involves the installation of supplemental ballistic pads to the Vests, which (i) are not certified at the same bullet resistant capacity as the Vests were represented to possess; (ii) add weight and bulk, in contrast to the lightweight and flexible design that defendant represented the Vests possessed, and (iii) which, upon information and belief, protect a smaller area than the Vests original ballistic panels, in contrast to defendant's representations that the bullet resistant capacity of the Vests extended to all areas that the Vests covered;
- c. the pro rata credit toward the purchase of replacement vests, which is necessitated by the deterioration of the Vests protective properties, imposes an unjustified financial penalty upon consumers, and

- d. similarly, the alternative of a discount piece on a replacement forces consumers to pay additional sums to obtain protection comparable to that supposedly offered by the Vests.

24. Despite the Vests' failure to provide the core function for which consumers purchased them – their ersatz ability to resist bullets – defendant's Program fails to provide any remedy that does not incur further costs on consumers in terms of safety, comfort, or money and is therefore unconscionable, immoral, oppressive or unscrupulous.

25. The defendant's acts or practices, as alleged herein, violate public policy, including the public policy against failing to provide adequate remedies for nonconforming goods as embodied in the common law and the Uniform Commercial Code and, in particular, General Statutes § 42a-2-719.

26. The defendant's acts and practices, as alleged herein, caused substantial injury to consumers who are forced to incur additional tangible and/or intangible costs in order to receive a Vest which is, in fact, bullet resistant.

27. The defendant's acts and practices, as alleged herein, are unfair acts or practices in violation of Gen. Stat. § 42-110b(a).

COUNT FOUR

1 – 27. The allegations of paragraphs 1 – 27 of Count Three are incorporated herein as paragraphs 1 – 27 of Count Four as if set forth in full.

28. The defendant engaged in the acts or practices alleged herein when it knew or should have known that its conduct was unfair or deceptive, in violation of Gen. Stat. § 42-110b.

COUNT FIVE

1 – 26. Paragraphs 1 – 26 of Count Three are incorporated herein as paragraphs 1 – 26 of Count Five as if set forth in full.

27. The defendant further represented in its warranty that:

If a defect is found in material or workmanship in either component of your vest, carrier outer shell or panels, during the applicable warranty period, return the vest directly to SECOND CHANCE Body Armor, Inc. at 788 M-88, Central Lake, MI 49622, post paid. SECOND CHANCE at its discretion, without cost to you, will repair or replace the defective part or the entire vest. (*Emphasis in original.*)

28. Despite the clear terms of the warranty, the defendant, in its correspondence, announcements and other public statements about the Program represented that consumers' only remedies for the defendant's breach of warranty were the supplemental ballistic pads to be installed on the Vests, a discounted price on a specified replacement vest, or a pro rated credit (depending on the age of a consumer's Zylon vest) toward the purchase on a replacement vest.

29. The defendant's representations regarding the Program are material in that they may lead consumers, acting reasonably under the circumstances, to believe that their only remedies are those described by the defendant.

30. The defendant's acts or practices, as alleged herein, constitute unfair or deceptive acts or practices, in violation of Gen. Stat. § 42-110b(a).

COUNT SIX

1 – 30. Paragraphs 1 – 30 of Count Five are incorporated herein as paragraphs 1 – 30 of Count Six as if set forth in full.

31. The defendant engaged in the acts or practices alleged herein when it knew or should have known that its conduct was unfair or deceptive, in violation of Gen. Stat. § 42-110b.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff claims the following relief:

1. The entry of judgment against the defendant and in favor of the plaintiff on all counts of the complaint.
2. An order permanently enjoining the defendant, its principals, officers, directors, representations, successors, assigns, agents, employers, and all other persons in active concert or participation with or on behalf of any of them, pursuant to Gen. Stat. § 42-110m(a), from further violations of Gen. Stat. § 42-110b(a).
3. An order pursuant to Gen. Stat. § 42-110m(a), directing the defendant to provide an accounting of the Vests sold to Connecticut consumers.
4. An order, pursuant to Gen. Stat. § 42-110m(a), directing the defendant to pay restitution.
5. An order, pursuant to Gen. Stat. § 42-110o(b), directing the defendant to pay civil penalties for each willful violation of Gen. Stat. § 42-110b(a).
6. An order, pursuant to Gen. Stat. § 42-110m(a), directing the defendant to notify every Connecticut consumer who may have been a victim of the acts or practices alleged herein of the availability of restitution.
7. An order, pursuant to Gen. Stat. § 42-110m(a), directing the defendant to disgorge all ill-gotten proceeds obtained through the acts or practices described herein.
8. An award attorney's fees, pursuant to Gen. Stat. § 42-110m(a).
9. Costs of suit.

10. Such further relief as the Court deems proper.

The plaintiff hereby states that the amount in demand is more than Fifteen Thousand Dollars (\$15,000.00), exclusive of interests and costs.

HEREOF FAIL NOT, BUT OF THIS WRIT, MAKE DUE SERVICE AND RETURN ACCORDING TO LAW.

Dated at Hartford, Connecticut this ____ day of _____, 2003.

PLAINTIFF

STATE OF CONNECTICUT

RICHARD BLUMENTHAL
ATTORNEY GENERAL

BY:

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